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OFFICE OF PETITIONS

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In re Patent No. 7,294,473
Issued: November 13, 2007
Application No. 10/721,404
Filed: November 25, 2003
Atty. Dkt. No.: 14539-004012

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: DECISION ON APPLICATION FOR
: PATENT TERM ADJUSTMENT UNDER
: 37 CFR 1.705(d) and PETITION UNDER
: 37 CFR 1.183
:

This is a decision on the "RESPONSE TO DECISION ON PETITION UNDER 37 C.F.R. § 1.183 AND ON APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(D)," filed October 27, 2009, requesting suspension of the time limit for consideration of an application for patent term adjustment ("PTA"). The response is properly treated as a request for reconsideration of petition under 37 CFR 1.183.

This petition is hereby **DENIED**. This decision is a final agency action within the meaning of 5 U.S.C. § 704 for purposes of seeking judicial review. *See*, MPEP 1002.02.

The petition for recalculation/reconsideration of the USPTO's PTA determination for U.S. Patent No. 7,294,473 is dismissed as untimely. On February 1, 2010, the USPTO published a Federal Register notice that, *inter alia*, announced a limited waiver of the two-month deadline for filing a petition for reconsideration of a PTA determination under 37 CFR sec. 1.705(d). *See Interim Procedure for Patentees to Request a Recalculation of the Patent Term Adjustment to Comply with the Federal Circuit Decision in Wyeth v. Kappos Regarding Overlapping Delay Provisions of 35 U.S.C. sec. 154(b)(2)(A)*, 75 Fed. Reg. 5043 (Feb. 1, 2010) (notice).

Specifically, patent owners were permitted to request recalculation of a patent's PTA in view of the Federal Circuit decision *Wyeth v. Kappos*, 591 F.3d 1364 (Fed. Cir. 2010) up to 180 days after the grant of the patent. The USPTO determined not to accept any requests for PTA recalculation initially filed more than 180 days after patent grant, however, in view of the statutory judicial-review provisions of 35 U.S.C. sec. 154(b)(4), which require that any civil action to challenge the USPTO's PTA determination be brought within 180 days of patent grant. The USPTO believes that the statutory 180-day period for seeking court review of the USPTO's PTA determinations, particularly in view of the six-year statute of limitations that otherwise is applicable for actions under the Administrative Procedure Act, indicates a congressional intent that PTA issues be resolved shortly after a patent issues. The USPTO does not consider it likely that Congress created a scheme under which the time period to seek initial USPTO review of a PTA determination extends beyond the time period provided for a dissatisfied patentee to seek judicial review of the USPTO's PTA determination. Thus, the USPTO believes that the 180-day period in 35 U.S.C. sec. 154(b)(4) represents the outer limit on the USPTO's ability to conclude its PTA determination.

The present renewed petition under 37 CFR 1.183 is granted to the extent that the decision of September 8, 2009 has been reconsidered; however, the renewed petition requesting suspension of the time limit for consideration of an application for patent term adjustment under 37 CFR 1.183 is hereby **DENIED**.

Telephone inquiries specific to this matter should be directed to Alesia M. Brown, Petitions Attorney, at (571) 272-3205.

A handwritten signature in black ink, appearing to read 'Anthony Knight', is positioned above the printed name.

Anthony Knight
Director
Office of Petitions